

Introduced by Senator AshburnFebruary 22, 2005

An act to amend Section 190.2 of the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

SB 817, as introduced, Ashburn. Murder: special circumstances.

Existing law, as amended by initiative statute, provides that the penalty for a defendant found guilty of murder in the first degree shall be death, or confinement in the state prison for a term of life without the possibility of parole, where one or more special circumstances have been charged and found to be true. In this connection, existing law provides for special circumstances for certain categories of victims.

This bill would add to the list of special circumstances a situation in which the defendant intentionally killed the victim who was under 14 years of age, and the defendant knew, or reasonably should have known that the victim was under 14 years of age.

The bill would provide that it shall become effective only when submitted to, and approved by, the voters of California.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 190.2 of the Penal Code is amended to
- 2 read:
- 3 190.2. (a) The penalty for a defendant who is found guilty of
- 4 murder in the first degree is death or imprisonment in the state
- 5 prison for life without the possibility of parole if one or more of

1 the following special circumstances has been found under
2 Section 190.4 to be true:

3 (1) The murder was intentional and carried out for financial
4 gain.

5 (2) The defendant was convicted previously of murder in the
6 first or second degree. For the purpose of this paragraph, an
7 offense committed in another jurisdiction, which if committed in
8 California would be punishable as first or second degree murder,
9 shall be deemed murder in the first or second degree.

10 (3) The defendant, in this proceeding, has been convicted of
11 more than one offense of murder in the first or second degree.

12 (4) The murder was committed by means of a destructive
13 device, bomb, or explosive planted, hidden, or concealed in any
14 place, area, dwelling, building, or structure, and the defendant
15 knew, or reasonably should have known, that his or her act or
16 acts would create a great risk of death to one or more human
17 beings.

18 (5) The murder was committed for the purpose of avoiding or
19 preventing a lawful arrest, or perfecting or attempting to perfect,
20 an escape from lawful custody.

21 (6) The murder was committed by means of a destructive
22 device, bomb, or explosive that the defendant mailed or
23 delivered, attempted to mail or deliver, or caused to be mailed or
24 delivered, and the defendant knew, or reasonably should have
25 known, that his or her act or acts would create a great risk of
26 death to one or more human beings.

27 (7) The victim was a peace officer, as defined in Section
28 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35,
29 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12,
30 who, while engaged in the course of the performance of his or
31 her duties, was intentionally killed, and the defendant knew, or
32 reasonably should have known, that the victim was a peace
33 officer engaged in the performance of his or her duties; or the
34 victim was a peace officer, as defined in the above-enumerated
35 sections, or a former peace officer under any of those sections,
36 and was intentionally killed in retaliation for the performance of
37 his or her official duties.

38 (8) The victim was a federal law enforcement officer or agent
39 who, while engaged in the course of the performance of his or
40 her duties, was intentionally killed, and the defendant knew, or

1 reasonably should have known, that the victim was a federal law
2 enforcement officer or agent engaged in the performance of his
3 or her duties; or the victim was a federal law enforcement officer
4 or agent, and was intentionally killed in retaliation for the
5 performance of his or her official duties.

6 (9) The victim was a firefighter, as defined in Section 245.1,
7 who, while engaged in the course of the performance of his or
8 her duties, was intentionally killed, and the defendant knew, or
9 reasonably should have known, that the victim was a firefighter
10 engaged in the performance of his or her duties.

11 (10) The victim was a witness to a crime who was
12 intentionally killed for the purpose of preventing his or her
13 testimony in any criminal or juvenile proceeding, and the killing
14 was not committed during the commission or attempted
15 commission, of the crime to which he or she was a witness; or
16 the victim was a witness to a crime and was intentionally killed
17 in retaliation for his or her testimony in any criminal or juvenile
18 proceeding. As used in this paragraph, “juvenile proceeding”
19 means a proceeding brought pursuant to Section 602 or 707 of
20 the Welfare and Institutions Code.

21 (11) The victim was a prosecutor or assistant prosecutor or a
22 former prosecutor or assistant prosecutor of any local or state
23 prosecutor’s office in this or any other state, or of a federal
24 prosecutor’s office, and the murder was intentionally carried out
25 in retaliation for, or to prevent the performance of, the victim’s
26 official duties.

27 (12) The victim was a judge or former judge of any court of
28 record in the local, state, or federal system in this or any other
29 state, and the murder was intentionally carried out in retaliation
30 for, or to prevent the performance of, the victim’s official duties.

31 (13) The victim was an elected or appointed official or former
32 official of the federal government, or of any local or state
33 government of this or any other state, and the killing was
34 intentionally carried out in retaliation for, or to prevent the
35 performance of, the victim’s official duties.

36 (14) The murder was especially heinous, atrocious, or cruel,
37 manifesting exceptional depravity. As used in this section, the
38 phrase “especially heinous, atrocious, or cruel, manifesting
39 exceptional depravity” means a conscienceless or pitiless crime
40 that is unnecessarily torturous to the victim.

1 (15) The defendant intentionally killed the victim by means of
2 lying in wait.

3 (16) The victim was intentionally killed because of his or her
4 race, color, religion, nationality, or country of origin.

5 (17) The murder was committed while the defendant was
6 engaged in, or was an accomplice in, the commission of,
7 attempted commission of, or the immediate flight after
8 committing, or attempting to commit, the following felonies:

9 (A) Robbery in violation of Section 211 or 212.5.

10 (B) Kidnapping in violation of Section 207, 209, or 209.5.

11 (C) Rape in violation of Section 261.

12 (D) Sodomy in violation of Section 286.

13 (E) The performance of a lewd or lascivious act upon the
14 person of a child under the age of 14 years in violation of Section
15 288.

16 (F) Oral copulation in violation of Section 288a.

17 (G) Burglary in the first or second degree in violation of
18 Section 460.

19 (H) Arson in violation of subdivision (b) of Section 451.

20 (I) Train wrecking in violation of Section 219.

21 (J) Mayhem in violation of Section 203.

22 (K) Rape by instrument in violation of Section 289.

23 (L) Carjacking, as defined in Section 215.

24 (M) To prove the special circumstances of kidnapping in
25 subparagraph (B), or arson in subparagraph (H), if there is
26 specific intent to kill, it is only required that there be proof of the
27 elements of those felonies. If so established, those two special
28 circumstances are proven even if the felony of kidnapping or
29 arson is committed primarily or solely for the purpose of
30 facilitating the murder.

31 (18) The murder was intentional and involved the infliction of
32 torture.

33 (19) The defendant intentionally killed the victim by the
34 administration of poison.

35 (20) The victim was a juror in any court of record in the local,
36 state, or federal system in this or any other state, and the murder
37 was intentionally carried out in retaliation for, or to prevent the
38 performance of, the victim's official duties.

39 (21) The murder was intentional and perpetrated by means of
40 discharging a firearm from a motor vehicle, intentionally at

1 another person or persons outside the vehicle with the intent to
2 inflict death. For purposes of this paragraph, “motor vehicle”
3 means any vehicle as defined in Section 415 of the Vehicle Code.

4 (22) The defendant intentionally killed the victim while the
5 defendant was an active participant in a criminal street gang, as
6 defined in subdivision (f) of Section 186.22, and the murder was
7 carried out to further the activities of the criminal street gang.

8 (23) *The defendant intentionally killed the victim, who was*
9 *under 14 years of age and the defendant knew, or reasonably*
10 *should have known that the victim was under 14 years of age.*

11 (b) Unless an intent to kill is specifically required under
12 subdivision (a) for a special circumstance enumerated therein, an
13 actual killer, as to whom the special circumstance has been found
14 to be true under Section 190.4, need not have had any intent to
15 kill at the time of the commission of the offense which is the
16 basis of the special circumstance in order to suffer death or
17 confinement in the state prison for life without the possibility of
18 parole.

19 (c) Every person, not the actual killer, who, with the intent to
20 kill, aids, abets, counsels, commands, induces, solicits, requests,
21 or assists any actor in the commission of murder in the first
22 degree shall be punished by death or imprisonment in the state
23 prison for life without the possibility of parole if one or more of
24 the special circumstances enumerated in subdivision (a) has been
25 found to be true under Section 190.4.

26 (d) Notwithstanding subdivision (c), every person, not the
27 actual killer, who, with reckless indifference to human life and as
28 a major participant, aids, abets, counsels, commands, induces,
29 solicits, requests, or assists in the commission of a felony
30 enumerated in paragraph (17) of subdivision (a) which results in
31 the death of some person or persons, and who is found guilty of
32 murder in the first degree therefor, shall be punished by death or
33 imprisonment in the state prison for life without the possibility of
34 parole if a special circumstance enumerated in paragraph (17) of
35 subdivision (a) has been found to be true under Section 190.4.

36 The penalty shall be determined as provided in this section and
37 Sections 190.1, 190.3, 190.4, and 190.5.

38 SEC. 2. Section 1 of this act affects an initiative statute and
39 shall become effective only when submitted to, and approved by,

- 1 the voters of California, pursuant to subdivision (c) of Section 10
- 2 of Article II of the California Constitution.

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